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National Consumers' League

Memorandum to the Public Service Commission...

New York

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MEMORANDUM

TO THE

Public Service Commission of New York
First District

ON THE

Proposed Plan to Provide for Fair and Reasonable Wages and Working Conditions and to Prevent Interruption of the Service on Street Railroads.

SUBMITTED BY

The National Consumers' League
Committee on Public Utilities and Franchises

PAULINE GOLDMARK, *Secretary,*
289 4th Avenue,
New York City.

March 2, 1917.

No. 1 3/23

MEMORANDUM ON THE PROPOSED PLAN OF THE NEW YORK PUBLIC SERVICE COMMISSION (FIRST DISTRICT), TO PROVIDE FOR FAIR AND REASONABLE WAGES AND WORKING CONDITIONS AND TO PREVENT INTERRUPTION OF THE SERVICE ON STREET RAILROADS.

The extensive strikes on the New York City street railways which took place in the summer of 1916 caused great inconvenience and called forth much dissatisfaction on the part of the public.

The Public Service Commission held public meetings at that time, and under its general powers of investigation inquired into possible methods of securing a settlement. The members of the Commission were thus given a remarkable opportunity for studying the general causes of disputes between the public service corporations and their employes. Of this opportunity they took full advantage, showing throughout a spirit of fairness and good will towards all parties concerned. Their lack of power to deal with the situation, however, proved the inadequacy of the existing law.

At the present time, when the difficulties between the street railway corporations and their employes are no longer acute, and when the matter can be dealt with without the bitterness of conflict, the Commission is proposing a plan by which it hopes to provide for fair and reasonable wages and working conditions and to prevent interruption of the service upon street railroads. These proposals deserve the most thorough consideration. It is of more than local importance that a sound solution of the questions should be achieved here. Any legislation adopted in New York is of far-reaching importance not only because of the large number of persons affected—both as passengers

and as employes—in the greatest industrial center of the country, but because the policy adopted in New York will inevitably serve as an example to be followed elsewhere in the United States.

I.

General Principles to be Considered in Drafting a Law to Insure Continuous Service and Fair Treatment of Employes.

1. Rights of All Parties Should Be Guarded.

It is due to the public that every effort should be made to ensure continuity of traffic and efficiency and safety of service on all common carriers, since it suffers the widespread inconvenience and disorder caused by strikes. It has, therefore, a right to be heard in any plan to obviate labor troubles that may interfere with the transportation facilities, upon which its daily life depends. When disputes arise, the people's interest is believed by many to be paramount. But since the quality of the service at all times—both as to safety and efficiency—is so closely dependent on the condition of the employes, it is clear that the latter's rights must be considered as equal in importance.

From a wider point of view the public has an interest in seeing industrial peace preserved which far exceeds in importance its own demands for safety and continuity of service. It is a matter of concern to society at large whenever peace is threatened by conflict between employers and employes. The common welfare of the state is at stake if proper relations are not established between all parties concerned ensuring mutual cooperation and understanding. Clearly, therefore, the proposed legislation should chiefly aim to provide for the settlement of grievances before conflict arises.

The Commission proposes new agencies for the

adjustment of relations between employer and employes. The fundamental change is the restriction placed on the employes' right to strike. It is proposed that strikes should be made illegal pending investigation by the Commission. By placing such compulsion on the men they are deprived of their most formidable protection. It is evident that so drastic a remedy is being proposed because the operation of public utilities is involved and the State's power to regulate them is acknowledged to be greater than when private industry is affected. Before proceeding to a detailed discussion of the proposed plan, it may be useful to consider what results could be attained *without compulsion* through other recognized methods of securing industrial peace.

2. Voluntary Instead of Compulsory Settlement of Industrial Disputes More Effective.

All forms of compulsion in settling industrial disputes are more and more held to be of doubtful benefit by officials who have had the widest experience in industrial mediation and arbitration. Several note the anomaly that the best results in general have been obtained without compulsory legislation. Thus William L. Chambers, United States Commissioner of Mediation, recently said: "Strange as it may seem, in the case of these two countries (Great Britain and the United States), where legal machinery has been provided for the settlement of grievances without any limitation upon the right to strike, the most pronounced success in dealing with disputes seems to have been attained."

In 1912, Sir George Askwith, Chairman of the Industrial Council of the United Kingdom, * * * reporting to the Imperial Government, expressed the following views as to the compulsory features of the Canadian act:

"In my opinion, the real value of the Act does not lie in either of these propositions, and certainly not in the second. The pith of the Act lies in permitting the parties and the public to obtain full knowledge of the real cause of the dispute, and in causing suggestions to be made as impartially as possible on the basis of such knowledge for dealing with the existing difficulties, whether a strike or lockout has commenced or not. This action on behalf of the public allows an element of calm judgment to be introduced into the dispute which, at the time, the parties themselves may be unable to exercise."

There is apparently grave doubt on the part of experts whether compulsion in itself will accomplish the end sought and whether public investigation and full publicity are not rather to be regarded as the most effective instruments in bringing about settlements.

In considering so great an innovation, it may be well to consider whether this is the only available method of securing the desired end and whether it would in any case be effective. The acknowledged greater power of the state to deal with conditions of employment under the franchise companies opens the way for greater participation of the public in all official negotiations between employer and employes. If, for example, an official tribunal makes a public investigation of all grievances among the employes of public utilities, it follows that the settlement is in large part dependent on public support. No side can afford to stand out against public sentiment.

3. Investigation and Publicity the Chief Need.

It is for these reasons that full public investigation of all disputes arising in the public utilities is so emphatically needed. The Commission apparently believes that it has made provision for this procedure under the proposed Wage Boards. But we submit that the question is a larger one, which is not met by providing for adjustment after disputes have arisen, or from time to time as special occasions arise.

The first and most important means of establishing the proper relations between workmen and their employes is to gather facts in regard to that relation. The difficulty of obtaining for the public the truth in regard to labor disputes has been, perhaps, the chief reason why it has had to stand aside and allow workmen and their employers to use the forcible means of strike and lockout without intervening.

What is immediately needed is machinery for a continuous and comprehensive inquiry into all the conditions of labor, with full publicity for all their findings. An officially appointed agency, preferably named by and subordinate to the Commission and subject to its direction, could best perform this work. It should, of course, have full powers to investigate and have in its employ the necessary experts.

The following points indicate in outline some of the essential facts that need to be known:

I. General Conditions of Employment.

Previous experience demanded.
System of promotions.
Length of service.
Number employes on full time.
Number employes on part time.
Displacement of workers.
Dangers of service.

II. Hours of Work.

Actual hours for all classes by the day—by the week.

Time lost waiting for work.
Broken time.
Irregularity of employment.

III. Wages.

Initial wage and advance for all classes.
Actual earnings as distinguished from nominal wages.
Extra pay for night work, Sundays and holidays.
Increases due to promotions, experience, etc.
Sickness allowances.
Vacation allowances.

IV. Relations With Employes.

Methods of discipline.
Provision for settling grievances.
Treatment of unions.
Quality of service.

V. Organization Among Employes.

History and growth.
Proportionate membership, etc.

VI. Earnings of Company.

The outstanding fact in the New York situation is that there has hitherto been no way of obtaining this information and sounding public opinion as to the standards it wished to see maintained in the service of the public utilities. Such a continuous investigation as above suggested, with current information at all times available is immeasurably more valuable than any special inquiry. It would furnish the basis for negotiation whenever disputes should arise; it would be permanently useful as setting the standard for wages, hours and general conditions of employment. Whatever further machinery is to be devised—whether wage boards or arbitration—for

carrying out this purpose, the facts would be of the first importance.

a. *Resort to Strikes Would not be Necessary.*

Since the recognized methods of reaching mutual agreements have not been given a trial, we submit that the logical next step is to provide by legislation for continuous investigation and for official mediation.

When disputes arise in private employment, mediation is the recognized first step. It may be possible to avoid or settle a conflict by bringing the parties to an agreement through the offices of an impartial third person not involved in the passion of the controversy. Mediation should be tried as a matter of course whenever the occasion arises.

If further provision is made for a wageboard besides permanent investigation and occasional mediation, the compulsory features should not be included since they immediately create antagonism on the part of the workers and thereby defeat the entire purpose of the bill. Manifestly the workers would be far more likely to enter into such negotiations through their unhampered free will. If they were assured an impartial hearing before a public tribunal and an opportunity for a fair settlement, a resort to strikes would be unnecessary.

II.

Criticism of Commission's Draft.

1. Proposed Plan Unduly Restricts Rights of Workers.

In analyzing the Commission's plan, it is further fair to ask what privileges are to be guaranteed to the employes in return for the loss of their right to strike, and also what possible abridgment of the company's privileges is in-

tended in return for their security from strikes and disorder.

The proposed plan makes strikes illegal. It has been explained that it does not remove the men's right to strike but that it simply postpones it "pending negotiation, investigation and determination." But the history of labor disputes shows that the immediate effect of such a provision is to give the employer strategically all the advantages. He can bring in strike breakers, prepare living quarters for them, and make such preparations that any future attempts of the men to get their demands by strike are set at naught.

There is in the draft no limit whatever to the length of time such preliminary negotiations may be continued and the right to strike withheld. It is further implied in the draft that even after the Wage Board has taken action, strikes are to be held illegal. This is to be inferred from the provision that the unions must sign an agreement to abide by the decision of the Wage Board and that a violation of the agreement shall be a misdemeanor. These two provisions taken together constitutes compulsion of the most stringent kind.

a. *Disproportionate Restrictions of Employes.*

The relative advantages for the employers and the relative disadvantages for the employes are clearly to be seen in the duty laid upon the latter to obey all orders of the Commission or the Wage Board. They must consent in writing in advance to abide by all such orders, decisions or awards. But no corresponding advance pledge is made obligatory for the employers. They therefore may ask for a review of any determinations which they do not like. But the employes, having by contractual agreement bound themselves to accept the determinations, cannot ask for a review. The

only redress open to them is to have an individual worker appeal for an investigation under Paragraph 9 on Grievances. Only an individual grievance is listened to, and a union or organization acting on the Wage Board would, as a body, have no redress.

2. Union Organization Threatened in Composition of Wage Boards.

One of the special aims, it is said, is to promote the power of the men to negotiate collectively. Certainly no such benefit is to be seen here.

The plan does ostensibly encourage organization among the men. Ten or more employes engaged in any branch of the service may form a union and after certain procedure have a right to represent its members in all negotiations. In organizing the Wage Board the Commission determines the proportionate number of members which each union shall nominate, and the employer is entitled to an additional number of representatives equal to the total number of employes on the Wage Board. The employer's representatives would obviously stand as a unit. But on labor's side, representation is disorganized and under this scheme will inevitably break up into different sections. For example, the unions which are admittedly in the control of the companies—such as the brotherhoods of the Interborough Company organized last summer—would have an equal right of representation in the official proceedings proportional to their membership. There is great danger that this plan would promote the formation of artificial or fictitious organizations under the control of an inscrupulous employer. It would undoubtedly increase the divisions in the ranks of labor rather than promote the power of collective bargaining.

Further, if every group of ten workmen or more, as the plan provides, is to be represented on the Wage Board, no one can tell how large the board will become, nor how difficult the transaction of business. The more the Board were composed of such groups, the greater would be the heterogeneity on the part of employes and the greater the unity and solidarity on the part of the employer.

In planning for the wage boards the Commission has apparently not taken cognizance of the official minimum wage boards for women now in successful operation in various states. These boards are composed of equal numbers of employes and employers, but the latter are not selected from artificially created groups but are the *bona fide* representatives elected by their trades.

Unorganized workers are by necessity represented by the spokesmen of the unions. If, at any time, they are not satisfied with the findings, it is open to them to organize and make their influence felt for themselves. Their interests are, in our opinion, better safeguarded by the agents of organized labor acting on the wage board than by the divided counsel which would result under the proposed plan.

a. *Bona Fide Unions Should Have Representation.*

Mr. Morris Hillquit proposes that no union should have representation on a Wage Board unless its membership includes at least one-tenth of the total number of employes in any given branch of the service. Furthermore, he suggests that the representatives of all parties should jointly have one vote on the Wage Board. The Consumers' League favors these amendments

because they would counteract to a substantial extent the above mentioned dangers, but it urges the importance of having no union represented on the Wage Board unless it includes at least one-fourth or one-fifth of the employes. Otherwise it will almost be impossible for labor to cast its joint vote, so great may the disagreements be in its own ranks.

3. Public Should Be Represented on Wage Board.

There is a final criticism regarding the composition of the Wage Boards. They arbitrate in wage disputes and also have such wide powers to act on grievances that they are in essence Arbitration Boards. Why then is the public not represented on them? No reason is given why the third party is omitted for whose benefit this whole mass of legislation is obviously intended. We have already described the benefits which may be expected from the fullest knowledge of the facts by the people. There is no question but that they should act in a matter so directly affecting their own welfare. But even if public utilities were not involved, the close interrelations of all groups in modern society have long since shown the need of considering the common welfare of all in adjusting industrial conflicts. We therefore suggest that the public should have representation on the Wage Boards in a tripartite arrangement whereby each party—employer, employe and public—should each have one joint vote.

4. "Fair and Reasonable" Wages and Working Conditions Cannot be Determined Without Some Standard.

The Commission does not specify what it means by "fair and reasonable." It does not even indicate that cost of living should serve as a guide as

it does in the determinations of the existing Minimum Wage Boards. However little applicable in the wider range of wages to be fixed by the Board, it might at least serve as a starting point. Moreover the Commission does not indicate that the rates of compensation for direct public employment of similar kind are to be followed. It is fair, therefore, to infer that the old rule of thumb of "prevailing wage" in any given locality for the same kind of work is to be adopted. Experience here in New York State in applying this conveniently elastic term is anything but satisfactory. The law controlling contracts for public work contains this phrase. In practical use it has resulted in the lowest wage scale which men underbidding each other could be induced to accept. This was clearly demonstrated last spring during the strike of the subway excavators. They demanded a wage of $2.00 a day, in place of the prevailing $1.60 or $1.75. If no better basis for a fair and reasonable wage were found, the main object of the Wage Boards to adjust wages more equitably would be defeated.

The terms "fair and reasonable" when applied to working conditions without further definition, if not meaningless, may even have the effect of reducing the high standards of safety now required from railroad companies.

We call attention here to the great value of having the actual facts as to the prevailing conditions of the service at the disposal of the Wage Boards. They would find in them the only sound basis for fair and reasonable determination of these difficult questions.

It is an obligation upon the public conscience that the benefits of the franchises which are granted to the street railroads should not be

enjoyed exclusively by the traveling public or by the corporate stockholders, but that they should be shared in fair proportion by the men who do the work. There is every reason, therefore, to give the Boards an opportunity to consider earnings of the companies as an important factor in fixing the wage scale.

5. Restrictions Imposed on Employers Ineffectual.

It may be said that the employers are bound on their side because of being prohibited from locking out their employes. But this provision supposedly in the interest of the men is illusory. For while ostensibly prohibiting a lockout of all the men, it would not check wholesale dismissals of individuals charged with insubordination or any kind of offense. A further supposed advantage is specifying fixed terms of employment for the men is also of doubtful benefit. Unemployment is in general not characteristic of work in the public utilities, therefore this benefaction means little. In fact it still leaves the power of dismissal in the hands of the companies.

6. Public Utility Employes do not Benefit from Franchise.

The mere fact that the employes work for the franchise companies should not obscure the fact that they enjoy none of the advantages conferred on the companies. The corporations enjoy all the privileges conveyed by the public franchise, while their employes stand on exactly the same footing as employes in private industry.

The plan is far from promoting these employes to a favored class. It would subject them to restrictions without compensatory benefits. The Commission thus curtails the rights of the men as

if they were in fact in the service of the State and on a par with civil servants without securing for them the corresponding advantages.

Furthermore, it should be pointed out that the primary aim and benefit of the bill—that is the rendering of continuous service—accrues to the company. It is the company that must render safe and continuous service. That is the obligation imposed upon it by the franchise. If it fails to do so its franchise may be forfeited. The statute by insuring to the public continuous service is at the same time protecting the company's franchise against forfeiture.

a. *Public Utility Employes Should be Favored Class.*

Since the employes of the franchise companies from the nature of the service are subject to special obligations and restrictions which do not obtain in private employment, it is reasonable that they should be guaranteed a high level of compensation and of working conditions. As quasi public servants they might well be put in the same class with the direct employes of the state or municipality. Men entering public service have certain rights and privileges, such as security of position, in general better pay, and more and more frequently a right to retirement pay. If a number of such substantial rights were definitely guaranteed to the public service employes, it would go a long way without compulsion, towards avoiding the present troubles that disrupt the service.

7. Publicity under Proposed Act is Insufficient.

The chief usefulness of official mediation in labor disputes is that it gives the public the fullest possible knowledge of all the facts at issue. Yet the Commission, while seeking new powers of

extraordinary extent both for itself and its subordinate board, makes no sufficient provision for full and immediate publicity of all investigations, recommendations and decisions. It is not sufficient that the Commission should act under its general powers, and that hearings are open to the public. It now requires from corporations detailed reports in regard to their financial transactions, their property and the conduct of their business. The power of the Commission should be extended so as to include express authority to require reports concerning all the conditions of labor, and the law should require that full and correct publicity be given to all such reports.

III.

Summary.

Summing up, our chief objections lie in the compulsory features of the measure:

We therefore urge that the following provisions be omitted:

1. Prohibiting of strikes (§11);
2. Criminal penalties (§12);
3. Requiring from men signed agreement to comply with decisions of Wage Boards without power to appeal (§3d).

We also suggest the following modifications, namely, that

1. The employes' representation on Wage Boards be confined to unions or associations having a membership of at least one-fourth or one-fifth of the employes in any branch of the service;
2. The public should have equal representation on the Wage Board;
3. Each party represented on the Wage Boards should jointly have one vote;

4. Both employer and employe should have power to ask for reconsideration of any findings of a Wage Board.

Furthermore, since the recognized methods of reaching mutual agreements have not been given a trial, we submit that the logical next step is to provide by law for continuous investigation and, when occasion may arise, for official mediation.

It may be objected that the changes above suggested leave all negotiation voluntary—to be entered into or not as each side sees fit. It should be noted, however, that the investigation of conditions of labor and publicity concerning the facts are to be made by the State irrespective of the desires of either side. Thus, the public will no longer remain ignorant.

We reiterate that the compulsory features of the draft should not be included since they immediately create antagonism on the part of the workers and thereby defeat the entire purpose of the act. Manifestly the workers would be far more likely to enter into such negotiations through their unhampered free will. If they were assured an impartial hearing before a public tribunal and an opportunity for a fair settlement, a resort to strikes would be unnecessary. They would in effect become inexpedient because the community has a legitimate concern in the operation of the public utilities and fear of alienating its sympathy would in itself act as a powerful incentive towards an orderly and peaceful settlement.

Before the State should resort to such extreme measures as restricting the right to strike, we submit that these other proposed means of obtaining harmonious adjustment of labor disputes between employer and employes of public utilities, as above outlined, should be given the fullest possible trial.

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